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OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6787

BILL NUMBER: SB 408

NOTE PREPARED: Mar 13, 2020

BILL AMENDED: Mar 11, 2020

SUBJECT: Various Tax Matters.

FIRST AUTHOR: Sen. Holdman

FIRST SPONSOR: Rep. Brown T

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill does the following:

It removes references to an out-of-state merchant's collection of the state Use Tax. (Under current law, an out-of-state merchant is required to collect the state gross retail tax (not the use tax) on retail transactions made in Indiana if certain threshold conditions are met.) It makes clarifying and technical changes to the definitions of "bundled transaction", "unitary transaction", and "gross retail income" in the Sales Tax statute, and "adjusted gross receipts" in the sports wagering statute. It removes outdated references to the Gross Income Tax and Adjusted Gross Income Tax. It makes a technical correction in the Gasoline Use Tax statute.

It changes the definition of "Internal Revenue Code" in the Adjusted Gross Income Tax law to mean the Internal Revenue Code of 1986 as amended and in effect on January 1, 2020.

It clarifies the allowable state income tax deductions and credits for a married individual filing a separate return.

It requires a payor of prize money to an initial recipient in connection with a racing event at a qualified motorsports facility to withhold Adjusted Gross Income Tax from the payment of the prize money.

It provides that a taxpayer is entitled to claim a historic rehabilitation tax credit granted for a year other than the year in which the preservation or rehabilitation of the historic property was performed and certification provided, notwithstanding the expiration of the historic rehabilitation tax credit chapter on January 1, 2019, and the cap on the amount of credits allowed in a state fiscal year beginning after June 30, 2016.

It defines "loans arising in factoring" under the Financial Institutions Tax statute.

It specifies the duties of the motor carrier service division of the Department of State Revenue (DOR). It removes obsolete provisions related to transporting gasoline or special fuel. It eliminates a redundant penalty provision for failure to file a quarterly Motor Carrier Fuel Tax report (this penalty is currently assessed and calculated under the penalty provisions of the International Fuel Tax Agreement as set forth in another section of the Indiana Code).

It authorizes the DOR to require a taxpayer to execute a power of attorney for representation of the taxpayer on a form prescribed by the DOR.

It requires each county to periodically submit certain data to the GIS Officer.

It allows a taxpayer to request a secondary review of adjustments to tax attributes in certain circumstances. It makes clarifying changes to the statute of limitations for tax assessments and tax refunds. It extends the statute of limitations for assessments for certain partners and partnerships.

It allows for certain disclosures of a taxpayer's information concerning returns and remittances for a listed tax in connection with the DOR's online tax system to an individual without a power of attorney. The bill provides that after a date determined by the DOR, not later than September 1, 2023, the DOR may not make disclosures of a taxpayer's information concerning returns and remittances for a listed tax to an individual unless the individual has a power of attorney or is otherwise authorized to receive the information by law.

It extends the statute of limitations to allow a refund of state and local income tax with regard to veterans' disability severance payments that were determined to qualify for a refund of federal income tax under the Combat-Injured Veterans Tax Fairness Act of 2016.

It revises the penalty provisions related to payments made to the DOR by a payment instrument on which the DOR is unable to obtain payment. It expands the functions of the taxpayer rights advocate office within the DOR.

It repeals the State Revenue Pilot Program Fund. It provides that any money in the State Revenue Pilot Program Fund before its repeal is transferred to the Motor Carrier Regulation Fund.

It makes conforming changes.

Effective Date: Upon passage; July 1, 2009 (retroactive); July 1, 2014 (retroactive); January 1, 2016 (retroactive); January 1, 2020 (retroactive); April 1, 2020; June 30, 2020; July 1, 2020; January 1, 2021.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR will incur additional expenses to revise tax forms, instructions, and software programs to implement the provisions within the bill.

The bill provides that the DOR must submit additional information about registered retail merchants to a township assessor, or a county assessor if there is no township assessor, before January 15 of each year. (Current law provides that the information must be submitted before March 15 of each year.) It requires the DOR to submit information about the attrition of registered retail merchant certificates during the preceding year for places of business located in the township or county. It provides in connection with agreements to furnish certain information to fiscal officers concerning collections of innkeeper's tax, food and beverage tax,

and admissions tax (local taxes), that: (1) the definition of "fiscal officer" includes a county treasurer in the case of a county; and (2) the DOR is no longer required to furnish a paper copy of the information concerning collections of local taxes.

It authorizes the DOR to require a taxpayer to execute a power of attorney for representation of the taxpayer on a form prescribed by the DOR. It allows for certain disclosures of a taxpayer's information concerning returns and remittances for a listed tax to an individual without a power of attorney if the individual was authorized by the taxpayer before September 8, 2020, to file returns and remit payments through the DOR's online tax system. It provides that the DOR shall establish a date, which may be earlier but not later than September 1, 2023, after which the DOR may not make disclosures of a taxpayer's information concerning returns and remittances for a listed tax to an individual unless the individual has a power of attorney or is otherwise authorized to receive the information by law.

The bill also removes redundant and obsolete statutes related to DOR's administrative duties. The agency's current level of resources should be sufficient to implement the changes.

Geographic Information System: The bill sets additional responsibilities for the State GIS Officer. It requires the GIS Officer to develop a standard for counties to submit parcel level data. It requires the counties to submit the data before September 1, 2021, and update it before September 1 of every year thereafter. It allows the DOR tax system to use this data to identify each taxing unit within which each taxpayer's residence is located. Beginning January 1, 2022, it requires the DOR to integrate the GIS data developed and updated by the GIS Officer. Starting FY 2022, it requires the DOR in consultation with the GIS Officer to annually submit a report to the General Assembly in an electronic format. These responsibilities will increase workload and expenditure for the GIS Officer and the DOR. The expenditures of the State GIS Officer is funded from the Indiana Mapping Data and Standards Fund. The fund receives appropriations, gifts, grants, and money received for GIS services. The DOR receives General Fund appropriations.

Explanation of State Revenues: *Internal Revenue Code (IRC):* The bill updates the reference to the IRC as amended and in effect on January 1, 2020. The current reference to the IRC pertains to IRC provisions amended and in effect on January 1, 2019. The update would include the changes as a result of the Further Consolidated Appropriation Act, 2020. Some of the major changes include extension of the deduction for qualified tuition and related expenses, exclusion of discharge of indebtedness on qualified principal residence, and look-through treatment of payments between related CFCs under foreign personal holding company income rules.

The revenue impact of recognizing the updated IRC will decrease state General Fund revenue by approximately \$7.9 M in FY 2020 and \$6.0 M in FY 2021. The estimates are based on state and federal income tax data and assumptions about taxpayer actions that trigger certain tax benefits that would reduce federal taxable income that is the basis of Indiana adjusted gross income.

Sales and Use Tax: The bill changes the definition of "unitary transaction" to exclude certain transactions that are also excluded from the definition of "bundled transaction." This provision could decrease Sales Tax revenue to the extent that items that are taxable under current law become exempt under the new definition of unitary transactions. The amount of Sales Tax revenue that could be lost is indeterminable, but would likely be minimal.

The bill also makes technical changes regarding the definition of "gross retail income," Use Tax collection, out-of-state retail merchants, and Gasoline Use Tax exemptions, and removes references to the repealed gross

income tax. These provisions are not expected to have a fiscal impact.

State Income Tax Clarifications: The bill clarifies the following allowable state income tax deductions and credits for a married individual filing a separate return:

- (1) Low Income and Elderly Exemption;
- (2) Partnership and Long-term Care Premiums Deduction;
- (3) Homeowner's Property Tax Deduction;
- (4) Rent on Principal Residence Deduction;
- (5) Disability Retirement Deduction;
- (6) Lake County Residential Income Tax Credit.

The bill states that the amount of all the listed deductions and credits for married individuals filing separately, with the exception of the Low Income and Elderly Exemption and Partnership and Long-term Care Premiums Deduction, is half the value stated for taxpayers in current statute. The bill also lowers the income eligibility thresholds for married individuals filing separately to half of the current values in statute.

Historic Rehabilitation Tax Credit: The bill allows individuals who were granted the Historic Rehabilitation Tax credit before January 1, 2016, for a qualified expenditure made before June 30, 2016, to claim their credit the year after it was granted, regardless of their assigned position in the ongoing queue to claim the credit. The bill states that the credit may be carried forward for up to 15 taxable years following the year in which the taxpayer is first entitled to claim the credit. [The tax credit is nonrefundable and may not be carried back.]

Currently, a total of \$2.4 M is scheduled to be distributed over a period of 6 fiscal years, FY 2020 to FY 2025. The bill would likely accelerate that schedule as eligible individuals claim their credit before their assigned year in the queue. The impact could begin in FY 2020 after taxpayers have the opportunity to claim the credit on their 2019 state income tax return.

Qualified Motorsports Facility Prize Money: The bill would require an entity that first pays prize money related to a racing event at a qualified motorsports facility to withhold the amount of state and local income taxes due on the prize money and remit that tax to the DOR. Withholding the tax due before the prize money is distributed relieves the recipient from the withholding requirements that would otherwise apply to the prize money and allows the recipient to exclude the postwithholding amount received from their state and local income tax liability. This administrative change should not impact the amount of individual income tax collected from such prize money.

Partnership Audit Adjustment Reporting: The bill states that a modification under Section 6221 through 6241 of the Internal Revenue Code (IRC) shall be included in the federal taxable income or federal adjusted gross income of the partners and the partnerships. It specifies that the provisions apply to the taxpayers whose taxable years begin or end as specified in the bill. It provides that an assessment to either a partner or a partnership as a result of modifications under Section 6221 through 6241 of the IRC may not be issued before December 31, 2021. To the extent that these provisions increase the audit efficiency and tax liability of a partnership in Indiana, it could increase individual income tax, corporate income tax, or financial institution tax revenues. Any fiscal impact on the state General Fund will begin in FY 2022 and years thereafter.

The Bipartisan Budget Act of 2015 and Consolidated Appropriations Act, 2018 adopted new IRS audit procedures for partnerships and limited liability corporations. Under the new rules, tax entity level adjustments are made at the partnership level and any adjustments to tax, interest and penalties apply in the

year that such adjustment is finally determined. These changes are expected to enable the IRS to more efficiently audit partnership and limited liability corporations. It also provides the options and opt-out provisions. Although, the new federal audit rules apply to taxable years beginning after December 31, 2017, the first IRS audits are likely to begin in 2020. The earliest completion date is expected to be in 2021 or 2022. Under current Indiana law, the conformity with these new federal rules is not automatic. This bill links the partnership audit guidelines with the federal rules applicable under the new law.

DOR Pilot Program Fund: The bill repeals the DOR Pilot Program Fund effective July 1, 2020. It requires that any balance in the fund on June 30, 2020, must be transferred to the Motor Carrier Regulation Fund. The bill also requires any future revenues that would be otherwise be deposited in the fund to be deposited in the Motor Carrier Regulation Fund. The balance in the fund is \$514,985 as of January 29, 2020. The amount transferred from the Pilot Program Fund to the Motor Carrier Regulation Fund will depend on the current balance in the Pilot Program Fund, expenditures from the fund until June 30, 2020, and any future revenues that would otherwise be deposited in the fund.

Motor Carrier Regulation Fund: The bill deletes a provision in current law requiring a transfer of balances above \$500,000 in the Motor Carrier Regulation Fund at the end of the year to the Motor Vehicle Highway Account. This transfer was last executed in FY 2014. The year-end balance in the Motor Carrier Regulation Fund in the last five years has been between \$1 M and \$3 M, but there were no transfers made to the Motor Vehicle Highway Account. This provision will conform to the current practice. It could reduce revenue received by the Motor Vehicle Highway Account in the future.

DOR Administrative Provisions: The provisions changing the date of an assessment or refund for certain taxes could impact the revenues from certain listed taxes. These taxes could be deposited in state General Fund and dedicated funds. The provisions revising the penalty related to returned or dishonored instrument of payments will have an indeterminable impact on penalty revenues received by the DOR in FY 2021 and thereafter. These penalty revenues are deposited in the state General Fund.

The bill provides that a credit for amounts withheld under the adjusted gross income tax law or the financial institutions tax law is reduced by the amount applied as a credit against the financial institutions tax. It provides that for various elements of tax procedure certain adjustments to a net operating loss, capital loss, credit, or other tax attributes are not final determinations. These clarifications will not have any significant fiscal impact.

Additional Information - Sales and Use Tax (Unitary Transactions): Current law provides that unitary transactions include all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated. Sales and Use Tax is calculated by multiplying the 7% tax rate by the gross retail income received in a retail unitary transaction.

The bill provides that the term unitary transaction does not include a retail sale that:

1. Is comprised of a service that is the true object of the transaction and tangible personal property that is essential to the use of the service or provided exclusively in connection with the service;
2. Includes both taxable and nontaxable products in which the purchase price of the taxable products does not exceed 10% of the total purchase price; or
3. Includes both exempt and taxable tangible personal property, any of which is classified as
 - a. Food and food ingredients;
 - b. Drugs;
 - c. Durable medical equipment;

- d. Mobility enhancing equipment;
- e. Over-the-counter drugs;
- f. Prosthetic devices;
- g. Medical supplies; and

the taxable products make up 50% or less of the total purchase price.

Under the bill, Sales Tax would not be applied to any of these transactions. However, the DOR already classifies item 2 as an exempt transaction under 45 IAC 2.2-4-2.

State Income Tax Clarifications: In tax year 2017, about 62,000 state income tax returns were submitted by married individuals filing a separate return out of the total 3.3 million returns filed. The number of married individuals filing separate returns who claimed one of the deductions or credits modified by the bill is shown in the following table. The table includes the total amount claimed by those filers with that amount as a percentage of the total amount awarded for each deduction and credit among all taxpayers.

Married Individuals Filing Separate State Income Tax Returns, Tax Year 2017			
Credit/Deduction	Number of Claims	Amount of Credit/Deduction	Percentage of Total Credit/Deduction Awarded among all Taxpayers
Low Income and Elderly Exemption	2,920	\$1,460,000	0.66%
Partnership and Long-term Care Premiums Deduction	147	\$297,669	0.56%
Homeowner's Property Tax Deduction	20,144	\$23,291,395	1.27%
Rent on Principal Residence Deduction	13,469	\$37,440,557	1.92%
Disability Retirement Deduction	*	*	0.99%
Lake County Residential Income Tax Credit	169	\$48,192	0.99%
<i>* Represents 5 or fewer filers.</i>			

Historic Rehabilitation Tax Credit: The credit was established to encourage the rehabilitation and preservation of historic properties that are at least 50 years old and are income-producing. The tax credit was first effective in 1994 and expired in 2016. Beginning in FY 2017, the tax credit was replaced by the Historic Preservation Grant Program. Due to an aggregate annual cap on the credit, a queue was created for taxpayers waiting to claim the credit in a future fiscal year. Before its expiration, credits had been assigned to taxpayers through fiscal year 2025.

DOR Pilot Program: HEA 1311-2018 set up a pilot program to be administered by the DOR to assist the state, other states, and other government agencies with certain essential or necessary functions related to motor carrier services. It established the Pilot Program Fund to assist with the implementation and administration of the pilot program. The fund consists of General Assembly appropriations, donations or gifts to the fund, and any proceeds from agreements or contracts made with third parties. The bill repeals the fund and requires the balance to be deposited in the Motor Carrier Regulation Fund.

Motor Carrier Regulation Fund: The Motor Carrier Regulation Fund is used for the purpose of funding the administration and enforcement of motor carriers in Indiana. Motor Vehicle Highway Account is an account within the state General Fund which receives revenues from motor vehicle registration fees, license fees,

gasoline taxes, and other fees and excise taxes. Money in the fund is distributed to local units and the Indiana Department of Transportation for use towards state and local highway projects.

Explanation of Local Expenditures: *Geographic Information System:* The bill requires all counties to submit parcel level data to the State GIS Officer before September 1, 2021, and before September 1 of each year thereafter. This would lead to additional workload for the county office responsible for preparing the data.

Explanation of Local Revenues: *Internal Revenue Code:* Updating the IRC reference affects state taxable income which will impact local income tax revenue. Recognizing the updated IRC will decrease local income tax revenue statewide by an estimated \$1.8 M in FY 2020 and \$1.7 M in FY 2021.

Qualified Motorsports Facility Prize Money: This administrative change should not impact the amount of local income tax collected from such prize money.

State Income Tax Clarifications: To the extent that clarifications in the allowable state income tax deductions for a married individual filing a separate return increases the taxable income for those taxpayers, local units could see an increase in local income tax revenue.

Partnership Audit Adjustment Reporting: To the extent that these provisions increase the audit efficiency and tax liability of a partnership in Indiana, it could increase local income tax paid by partners that have individual income tax liability.

DOR Administrative Provisions: The provisions changing the date of refund for certain taxes could have a local impact. The impact is indeterminable.

State Agencies Affected: Department of State Revenue, Department of Transportation, State Geographic Information System Officer.

Local Agencies Affected: Local units.

Information Sources: LSA Income Tax Database; Legislative Services Agency, *2015 Indiana Tax Incentive Evaluation*, <https://www.congress.gov/bill/114th-congress/house-bill/1314/text>, <http://www.mtc.gov/Uniformity/Project-Teams/Partnership-Informational-Project>, <https://www.in.gov/dor/3617.htm>, Indiana CollegeChoice 529 Education Savings Plan - DOR Information Bulletin #98 <https://www.in.gov/dor/reference/files/ib98.pdf>. The Joint Committee on Taxation, Estimates of Revenue Impact, <https://www.jct.gov/publications.html?func=startdown&id=5237>

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